

COMMONWEALTH OF VIRGINIA

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VIRGINIA HOUSING COMMISSION

SUMMARY

**Virginia Housing Commission
Joint
Neighborhood Transitions and Residential Land Use Work Group
Housing and Environmental Issues Work Group**

**August 2, 2016, 10:00AM
House Room C, General Assembly Building**

I. Welcome and Call to Order

- **Senator Mamie Locke, Chair**, called the meeting to order at 10:00 AM:

Work Group members in attendance: Senator Mamie Locke, *Chair*, Senator George Barker; Delegate David Bulova; Delegate Betsy Carr; Delegate Barry Knight; Delegate Mark Flynn, *Gubernatorial Appointee*; Laura Lafayette, *Gubernatorial Appointee*; Bernard Caton, *City of Alexandria, Legislative Director*; Tyler Craddock, *Manufactured & Modular Housing Association*; Cindy Davis, *Building Codes/Dept. of Housing & Community Development*; Chip Dicks, *Virginia Association of Realtors*; Brian Gordon, *Northern Virginia Apartment Builders Association*; Michelle Gowdy, *Virginia Municipal League*; Kelly Harris-Braxton, *Virginia First Cities*; Joe Lerch, *Virginia Association of Counties*; Barry Merchant, *Virginia Housing Development Authority*; A. Vaughan Poller, *Hampton Roads Housing Commission*; Elizabeth Rafferty, *Department of Housing & Community Development*; Earl Reynolds, *City of Danville, Community Development Director*; Michael Toalson, *Home Builders Association of Virginia*; Cal Whitehead, *Whitehead Consulting*; Brian Buniva, *Environmental Health & Safety; Sequa Corporation*; Ron Clements, *Virginia Building & Code Officials Association*; James R. Dawson, *Virginia Fire Prevention Association*; Sean P. Farrell, *Virginia Building & Code Officials Association*; Michelle Gowdy, *Virginia Municipal League*; Ed Rhodes, *Virginia Fire Chiefs Association*; Neal Rogers, *Virginia Housing Development Authority*; Jerry M. Wright, *Central Virginia Chapter-Community Association Institute*

Staff: Elizabeth Palen, *Executive Director of VHC*

II. Recordation of Deed / Liens (HB 636, Marshall D. 2016)

DELEGATE DANIEL W. MARSHALL, III
DELEGATE DAVID L. BULOVA
DELEGATE BETSY CARR
DELEGATE BARRY D. KNIGHT
DELEGATE CHRISTOPHER K. PEACE

SENATOR MAMIE E. LOCKE
SENATOR GEORGE L. BARKER
SENATOR WILLIAM M. STANLEY

MARK K. FLYNN
LAURA D. LAFAYETTE
T.K. SOMANATH

- **Locke:** We'll go ahead and get started with our agenda, beginning with House Bill 636, which was Delegate Marshall's bill on recordation of deeds and liens. Delegate Marshall is not here today, but he has Corey Wolfe here, who is the assistant city attorney for Danville. He will be doing a presentation on the legislation. Thank you and welcome.
- **Corey Wolfe, Assistant City Attorney, Danville:** Good morning, ladies and gentlemen. The city of Danville has proposed a pilot program that would essentially allow city council to require that no deed that transfers real estate within the city can be recorded unless the Department of Finance has certified that all delinquent real estate taxes, nuisance abatements, and other city assessments which constitute a lien on the property have been paid.
 - There would be an attorney exception to this for attorney brokered settlement where the attorney who drafts the deed could basically say this was drafted by an attorney who's in good standing with the bar, and any delinquent real estate taxes will be paid when closing proceeds are disbursed after the deed is recorded. So that would be something useful to have.
 - We are interested in this for a number of reasons. There is an obvious benefit that it facilitates delinquent real estate collection, which is an issue in Danville, considering that our properties are by and large of fairly low value. So we're kind of looking to use a shotgun approach to tax collection. But there are also a number of other benefits. This measure would facilitate our enforcement of delinquent tax and nuisance abatement liens.
 - For nuisance abatement liens like weed abatement, demolition of unsafe structures, things like that, state law requires us to actually bill those in the same manner as taxes and let them come delinquent naturally, which normally takes about thirty days. But within that time after receiving notice that this debt is due, a property owner may just convey the property to someone else, often someone who is completely unsuspecting and that has no interest in receiving the property. If that happens before we are able to record a lien, we can no longer enforce that debt against the property. We can only take a warrant in debt against the property owner. So it would facilitate our ability to enforce these liens, which of course supports our redevelopment efforts and blight abatement efforts. But there's also a definite consumer protection element as well.
 - If you have any questions at this state as well, I'd be happy to hear them.
- **Mark Flynn, Governor Appointee:** Madam Chair, as a practical matter, this applies really where there's no financing in the transaction?
- **Wolfe:** That's right, Mr. Flynn. In most cases, this is going to be a non-issue, as I said. Whenever there's a title search being performed, taxes are being checked. And any competent settlement attorney or real estate agent would ensure that those were paid before title is transferred.

- What we're really trying to get at is this sort of private treaty kind of shady deed-of-gift. Often the deeds are prepared by the owner themselves and may not even have legal effect. We're really trying to cut against these sorts of efforts to obscure who is the true owner.
- Something that we see often is that people will kind of dispose of these properties in any way they can either to avoid a tax or nuisance abatement delinquency or to avoid a criminal maintenance code enforcement case or a judicial tax sale case, which really hampers our efforts as far as blight abatement goes.
- **Flynn:** What percentage of the transactions in your city do you think would be subject to this?
- **Wolfe:** As I said, unless you count the attorney exception, which kind of obviates any need to go to city hall, I don't know about a percentage. Last year, I know that there were 143 property transfers that occurred without the delinquent taxes being eventually paid.
- **Locke:** Are there other questions?
- **Locke:** Chip Dicks.
- **Chip Dicks, Virginia Association of Realtors:** Madam Chair and member of the work group, Chip Dicks on behalf of the realtors and the circuit clerks on this particular issue.
 - I had a chance to work with Mr. Wolfe and Mr. Bohannin and Witt Clement on this during the session. The realtors had concerns because of the fact that we were concerned about the impediments to closing and the fact that there would be an additional requirement before closing. So the attorney exception, I think, helps us significantly on that and satisfies our local association.
 - The realtors were also concerned about the fact that there would be sort of a hodgepodge, if you will. The way the legislation was introduced, it would have been at local option. And so the recording practices and the deed practices in different localities may have been different throughout the state. And somebody from outside that locality would have known that necessarily without checking with that particular locality. So it would have created sort of an additional burden and impediment to closing.
 - Those issues have been addressed in a couple of substitutes that we've been discussing. One substitute we discussed during the session was whether or not there might be a possibility that the city would be willing to put a lis pendens on, a lis pendens being a notice that the taxes had not been paid. That approach was not acceptable to the city, so we tried another approach. And that approach is basically that there would be a three-year pilot project in the city of Danville and

that the city Finance Department would be responsible for providing the stamp on the deed. And yet to Mr. Flynn's point, the circumstances would be that all attorney-prepared deeds and attorney-closed deeds would be excepted from this process. So hopefully that would capture the universe of those properties that are delinquent and distressed and whatnot where somebody's trying to get around the process and transferring property not necessarily for a positive means.

- Realtors would be fine with the substitute that the parties have been working on. The clerks are not enamored with the substitute, but I think they would accept the substitute that was limited to a pilot project for three years with a report back to the Housing Commission in 2020, and then a sunset of 2021.
- So Madam Chair and members of the work group, I think it would be the joint request of the stakeholders that have been directly involved in this that you keep this on your agenda, give the stakeholder group a chance to finalize legislation and bring back to you a draft that at least would meet the stakeholders' concerns. And then at that point, you can consider that on the merits at that point. I think we'll be ready certainly within a month to finalize language.
- **Locke:** Okay. And this is fine with Delegate Marshall. All right. We will now move to item number three, Recycling Programs for Multi-Family Dwellings. This is Senate Joint Resolution 87, Senator Ebbin.

III. Recycling Programs for Multi-Family Dwellings (SJ 87, Ebbin A. 2016)

- **Senator Adam Ebbin, *Senate of Virginia*:** Thank you, Madam Chair.
 - Ten years ago, the General Assembly reduced our recycling goals. We had goals, which we still have, but they were reduced because we weren't meeting them. And we know that recycling saves energy. We know that it reduces waste to landfills and incinerators, which is of course a desirable goal. And we know that we do have state goals that are required to be met from DEQ and the Virginia Waste Management Board.
 - I think it's time for review; 2006 is when we reduced those goals. So I thought, we've got some low-hanging fruit. I know if you have one apartment building or one condo building, that that can be close to a whole neighborhood's worth of recycling that you can pick up at one point. I think it's a way that we could do better.
 - I know from my personal experience, the building that I used to live in in the City of Alexandria, when I moved in there was no recycling. I had contacted the city. If memory serves me right, at that time the city required a recycling plan. They didn't have any enforcement mechanism, which is maybe a separate issue. But there were no teeth in it. There were buildings in a pretty dense city that were not recycling that were densely populated.

- I know from my experience here in Richmond, for those who stay in a building called Riverside on the James, there is no recycling available. I had to take my recycling, put it in bags, and bring it somewhere else, which is something that most consumers are not going to do.
- We have a goal statewide of 15 to 25 percent. I don't think it's within this Commission's purview about what the state goal should be, but I think it is, of course, certainly within your purview about what these buildings do. So I'm asking you to study requiring it. And I think there could be some considerations that can be met if there are potential objections. For example, if rural areas don't offer recycling, you obviously would have a hard time requiring it. So it's possible to limit any requirements to localities that have recycling already available.
- If there were an issue with older buildings, you could always grandfather it in based on the size of the building, the number of units. In my experience, it's not that hard in most buildings to put in some of those Toters, but that's something you'll have to consider, whether the apartment and condominium groups find it difficult for some of their members.
- That's the gist of it. Just in terms of Code sections, it's § 15.2-928 that requires the local recycling waste disposal. And then [Title] 10.1 has the solid waste management goals. So that's my request is that you look at where it's being done, if it should be required to be done everywhere, which is my belief. I don't know if there are questions.
- **Locke:** Are there any questions of Senator Ebbin? Brian?
- **Brian Gordon:** *Apartment and Office Building Association of Metropolitan Washington:* Thank you.
- **Ebbin:** Can I interject one more thing that I think Mr. Gordon might have a comment on? I had not contemplated anything at all about offices. But I think it might be interesting to look into whether offices recycle paper or whether or not that would be a burden. That would also be another area that might provide a significant amount of recycling.
- **Gordon:** Thank you, and good morning, Madam Chair, members of the work group. My name is Brian Gordon. I'm here today representing the Apartment and Office Building Association of Metropolitan Washington, as well as the Virginia Apartment and Management Association. And I apologize. We had sort of a short timeline coming into today's meeting, so I don't have as much information as I'd like to have for you. But I have been able to compile some information that will hopefully be helpful to you in your discussion on this issue.
- As Senator Ebbin indicated, state code is currently permissive in terms of recycling policies, allowing local governments the authority to mandate by local

ordinance any type of property to participate in the recycling program. Section 15.2-937 reads: “Any locality may by ordinance require any person to separate solid waste for collection and recycling” and that “[a]ny such ordinance shall specify the type of materials to be separated.”

- I will call out one other line in that section because it’s something that our members view as critical. No such ordinance at the local level shall impose any liability on any apartment or commercial office building, owner, or manager for the failure of tenants to comply with any of the provisions of the ordinance. I raise that because there are some jurisdictions across the country that have adopted provisions in their recycling laws that hold the property owners liable for the actions of the tenants. I’ll use our neighbor to the north, Washington, D.C., as one example. The office building that AOB is in, the city has people that they pay to dumpster dive. If they find an aluminum can in your waste disposal container, you get fines of up to \$1,000 and escalating from there. That’s against something that our members find very problematic because we don’t have the ability to control the behavior of the tenants, necessarily.
- I will say that in the current landscape in Northern Virginia, these types of ordinances are very common. In fact, of the five major jurisdictions that comprise Northern Virginia—Alexandria, Arlington, Fairfax, Loudoun, and Prince William—Prince William is the only one of those five that doesn’t have a mandatory recycling program for multi-family. I did not look at commercial for the purposes of today’s discussion, but I believe that commercial is included in those policies as well. So it’s something that in Northern Virginia a lot of our members already do comply with, these programs.
- We tried to get an idea of what the landscape is across the rest of the Commonwealth. Unfortunately, that’s unknown to us at this time. We did reach out to Michelle at VML and Joe at VACO. Both were very helpful and got back to me. Unfortunately, those organizations don’t keep that data. We’ve also reached out to the Virginia Department of Environmental Quality, their recycling programs, and haven’t heard back. But certainly if we do get some information from them, we’d be happy to share that with the Commission as well. But that is to say we don’t know what the pervasiveness of mandatory recycling policies is currently across the rest of Virginia and who would be affected by this.
- I will, however, share with you one example. Arlington County actually does a really good job on educating property owners, what their responsibilities are under their local ordinance, which does mandate recycling in multi-family properties. So I wanted to share with you what is entailed in such a program so that you know sort of what’s required of building owners and property managers.
- Any owner of any property with three or more dwelling units is responsible for providing recycling of cardboard, mixed paper, magazines, newspapers, office paper, etcetera, metal and aluminum, glass bottles and jars, plastic, food and beverage containers, etcetera. In Arlington County, they recommend a single-

stream recycling program. That means that you have one bin into which all recyclables are dropped and that the vendor, whoever collects the recycling, separates those out for their individual recycling. The other way to do it is through a multi-stream, where you have basically one container for plastic, one container for glass, one for paper. That obviously gets very logistically difficult because you have so many containers around.

- Arlington's ordinance actually has a one-for-one requirement, meaning that anywhere you have a waste bin, you also have to have a recycling bin so the tenants have the option to throw things one place or the other. That also holds true of the dumpsters in the dumpster bays where you have to have a one-to-one ratio of recycling container to trash container.
- The housing provider is responsible for setting up the collection in Arlington County. It's not done by the municipality. Throughout Northern Virginia this is fairly typical, where you're responsible for setting up somebody to come in and collect that recycling. It's a minimum weekly collection in Arlington County. But if the property requires it, they'll require that they come more frequently than that.
- And then finally they have labeling requirements for the recycling containers as well that stipulate what language has to be on those containers in order to educate the tenants where they need to be disposing of their waste items.
- Finally, education of the tenants is required within the Arlington County ordinance. The education materials have to be in written form or in electronic form. It can't be just done verbally. It has to be provided to tenants within fourteen days of move-in. Inspections can be done by the County at any time. They can show up at the property and make sure that everything is in compliance with that ordinance.
- The recycling plan that you come up with has to be approved within sixty days of the building getting its certificate of occupancy. And then it has to be reapproved by the County every three years to make sure that you're complying with the ordinance.
- I just wanted to run you through that to give you an idea of what is entailed in their types of programs. We did try to collect a little bit of information in terms of cost. Again, because we were on a short timeline, I was only able to get through to a couple members. Just to use one member's example, we have a member in Blacksburg who has five smaller garden-style properties in which they have the four-yard, single-stream containers that are collected on a weekly basis. They generate roughly thirty-three tons of recycling every year with a cost of collection of only thirty dollars per week. But when you multiply that by five properties times fifty-two weeks a year, that comes out to roughly \$8,000 a year, which isn't a tremendous expense, but it's also not insignificant, particularly for smaller properties.

- And then finally I just wanted to share with you a couple of other considerations that you might want to take into consideration in your deliberations. One of the issues that we've run into in jurisdictions that want to newly require recycling policies is the issue of space, as Senator Ebbin referenced. Your property may be configured such that you don't have enough space within your pickup bays for an additional waste container. You have the trash bin there already, and there's not space for a recycling container. It's a logistical issue, but it's something that when you think of urban areas like here in Richmond, it can be particularly difficult to try to get around.
- Finally, the administrative and enforcement cost to local governments. My understanding is that in the City of Blacksburg, they've actually had a recycling policy on the books for several years. But it's something they haven't started really enforcing until recently because they simply didn't have the resources. So that's also something to keep in mind.
- **Locke:** Thank you. Are there any questions?
- **Ron Clements:** Madam Secretary, Ron Clements. You mentioned enforcement. What agency is enforcing this? Or is there a specific agency that typically gets tasked with this?
- **Gordon:** I think it's the local governments themselves that are enforcing. I don't know which departments. It's probably different for each locality.
- **Michael Toalson, *Home Builders Association of Virginia*:** Madam Chairman?
- **Locke:** Yes.
- **Toalson:** Mike Toalson with the Home Builders. In Northern Virginia, in those localities that require recycling, are those costs paid for by the locality or are they paid for by the apartment owner?
- **Gordon:** It's paid for by the apartment owner. I will note that that's typically a pass-through onto the tenants. As everybody here knows, it's a single-revenue stream business. So anytime costs are increased, that's typically passed through to the tenants.
- **Toalson:** Is that passed through in the form of rent or passed through in the form of a specific charge or do you know?
- **Gordon:** I don't know. I would suspect that it's built into the rent, but I don't know the answer to that for sure.
- **Locke:** Yes, Chip.
- **Dicks:** Madam Chair, I think I can answer that last question. I think it varies from apartment community to apartment community. But there is specific legislation about

three years ago that allowed recovery of local government fees and to set them out sort of like your cell phone bill so that you know exactly what your locality's charging for, whether it's recycling or other municipal inspections and/or rental inspections, things like fire code inspections—all of those kinds of inspections. There is a laundry list of items that I know a number of landlords list. But it does vary. Some landlords just roll it in the rent and say that this includes all these charges. Other landlords I think break it out.

- **Locke:** Are there other questions?
- **Dicks:** Madam Chair, could I ask a question of Senator Ebbin? Adam, understanding that already localities can mandate this recycling program in whatever localities feel like that's appropriate for them, talk to us for a minute about why this should be a statewide mandate.
- **Ebbin:** I don't know what the percentage was that was required in 2006, but the General Assembly lowered the goals for recycling across the state. I don't think it was just the rural areas. I think it was everywhere in 2006. So it's been ten years. We know a lot of places are doing this. But there's no reason if Fairfax can do it that Prince William couldn't come up with a plan to do it as well.
- Also, in reference to Mr. Toalson's point. I think you asked who pays for it. I thought that in Alexandria and Arlington, that if you're not in an apartment or—that they pick up from individual homes, and that's part of what they provide.
- Right now, the buildings pay for trash collection, so this is a supplement. In my experience, all the trash haulers also offer recycling. Whether or not it's on the same truck—in three apartments and condos that I've lived in, in the City of Alexandria, it's always been the same day as trash collection. And I believe they even had portions on the same truck where they could put the recycling separately. So there is certainly a cost involved, but we also have to think about the cost involved of more landfills and to the environment and in general to our energy costs from not recycling. So I would say that even though localities can do this, that they should all follow the same standard, if it's possible. I can understand if the Commission would like to make exceptions for rural localities where there's not recycling available. But if it's available to a recycling center, if it can be contracted for, whether you start it all at once or tier it as to when they have to do this—I think certainly all new buildings should be doing this. And I think most existing buildings could be doing it.
- Smaller buildings, there is limited space. But I know Riverside on the James here in the City of Richmond, there's plenty of space for Toters near where the dumpster is. And it just kinda bothered me. I recycle. And there are a lot of people who want to recycle, citizens of the Commonwealth. And for it not to be available, and for me to have to bring it in my car up to Northern Virginia on the weekends, most people aren't going to do that. It's just a waste of resources. And contrary to the policy of the Commonwealth, if we have goals for how much should be recycled, we should make it easy to recycle everywhere that we can within reason. Thank you.

- **Dicks:** Madam Chair, if I could ask Michelle and Joe for a local government perspective, what a mandate would look like at the local government level and what it would cost in the implementation issues. The question is whether localities already have the authority to do this, and now the proposal is that they be mandated to do that.
- **Locke:** Could I add a question to that as they're talking? To get a better picture of what it would look like, we also ask if you could survey your members to see what's already being done.
- **Joe Lerch, *Virginia Association of Counties*:** Madam Chair, Joe Lerch with Virginia Association of Counties. That's a good question, Chip. One of the things that was rolling in my mind during the presentation by Senator Ebbin is if it's a requirement, is it a requirement in [Title] 15.2 or is it a requirement in [Title] 10.1? If it's a requirement in 15.2, then there's obviously a local fiscal impact that we'd want to consider. If it's required in 10.1, then I think it would be DEQ that would be enforcing this potentially at the local level as it relates to what the recycling plans are. I think that's an open-ended question at this point.
- **Michelle Gowdy, *Virginia Municipal League*:** Madam Chair, Michelle Gowdy, Virginia Municipal League. That other part of that is—and I think Brian talked to it—the enforcement part of it and if that goes to the locality. I'm not sure, thinking off the top of my head, who in the locality is going to be available or able to do that, especially when some localities have private trash collection and some are locality-driven drive collection. So I think there are a lot of issues there that we're going to have to think through. And I'm happy to survey our members, though, absolutely. Thank you.
- **Toalson:** As some of you may know, I sold my house. And like a lot of people, sometimes I'm waiting for my new house to be built. A new smaller house, I'm happy to say, in the City of Richmond. So I'm in an apartment.
 - What would the cost be? Are they fifteen dollars a month or are they five dollars a month? I pay all those fees right now. So as an apartment owner, do you have an idea, Brian, what those costs are when they're passed along?
- **Gordon:** No sir, we don't know the answer to it on a per-tenant basis or even on a per-square-footage basis. We spoke to just a couple of members in advance of this meeting and got a couple of different examples of what they were paying. And it's different for each property. But the one example that we were able to get concrete numbers on was the smaller properties in Blacksburg where it was 8,000 for the five properties—again, very small properties—over the course of a year. So again, I don't think there are tremendous costs that are being passed on to the tenants, but they're not insignificant. I'm sorry I don't have more specific data for today's presentation.
- **Toalson:** I had one other question. I'm living in 895 square feet. One of our challenges, Senator, was where we put things. We found a place for our trashcan. Is the idea that you would have a separate second trashcan in your little apartment? I

know this, when I lived in Chesterfield County, every Friday they picked up garbage. And once every two weeks on a Tuesday, they came by and picked up our recycling. I know in that home, my wife made us have bins for paper and plastic and glass and tin. We had four bins in the garage, built-in.

- **Ebbin:** Well, I want to commend your wife, first off. Secondly, I lived in a 600-square-foot condominium in Alexandria, and there was no recycling to speak of. So what I did is I got permission from the board and I found a recycling company that would do it. This was years ago, and I don't know if this economic model would work at all now. I got them to do it for free because we had space for large containers. They would come every so often. Back then at least they would make money from selling recyclable materials. I don't know if that's the market anymore. But if your building had space for Toters or something, you could put them there. When you empty your trash, don't you empty your kitchen trash if it gets full more than once a week?
- **Toalson:** I don't do that.
- **Ebbin:** Well someone in your house—if you have several bags of trash, your building probably has somewhere onsite you can put it.
- **Toalson:** Yes. All I know is we have one big bin. It goes out of the sack. I was just thinking about the logistics of it given my new constraint of space.
- **Ebbin:** Sure, sure. As Mr. Gordon said, you don't force the individual tenant to recycle, you require the availability of recycling so that people can participate in it. I wish everyone in the world would recycle, but I'm not going to suggest that we have localities going through people's trash bags to see if they do, the way apparently they were doing in D.C.
 - So space is a consideration. The Commission might decide after research that localities could except apartments built before X year or apartments built before this year. But it's just not being done everywhere it should or available everywhere it should.
 - I think Ms. Gowdy might have asked or someone asked Ms. Gowdy about who would enforce this. I don't know who enforces policies to do with trash and refuse collection in localities. But perhaps it could be the same thing. Perhaps it could just be complaint-driven to avoid onerous cost to localities.
 - Basically what I'm looking for is somewhere to put your recycling if you want to do that in a way that's not onerous to existing apartment or condo buildings where there's no space for that. And I'd also point out with a pass-along we paid whatever the pass-along cost is for trash pickup. And this is another kind of trash pickup. Certainly it could make the cost go up. But we're in the twenty-first century, and we're limited on the space for trash in our landfills, and we know that recycling is a good thing. So over time it's something I just think we have to do.

- **Locke:** Are there any additional questions?
- **Lerch:** Madam Chair, Joe Lerch with VACO. I have just one thought in regards to Senator Ebbin's thought about a complaint-drive process.
 - If that's an avenue, probably it best be in [Title] 10.1 of the Code because there are regional DEQ offices that have waste management specialists that could respond to that. Not every locality has that type of personnel.
- **Locke:** I think they just resolved it.
- **Male:** Well, no, ma'am. We haven't resolved it yet.
- **Locke:** I don't think we're going to resolve it right here. So I think right now it's something that we can continue to do some research on and bring it back to our next meeting.
- **Ebbin:** Thank you, members of the Commission.

IV. Historic Properties not Located Within a Homeowner Association / Mandatory Disclosure of Relevant Information (SJ 80 Locke M. 2916)

- **Locke:** We'll move now to item number four dealing with historic properties not located within a homeowner association, dealing with mandatory disclosure of relevant information. This was Senate Joint Resolution 80, which was my legislation. And it came from the City of Portsmouth. I'll have Sherri Neil, the Intergovernmental Affairs Director for the City of Portsmouth discuss that. And she's brought two citizens from the City of Portsmouth to also discuss this issue.
- **Sherri Neil, Intergovernmental Affairs Director, Portsmouth:** Thank you, Madam Chair. Good morning, members of the Commission. Again, I'm Sherri Neil with the City of Portsmouth.
 - This particular issue was brought before us during our preparation of our legislative package for this past General Assembly session. It appears to be an unintended disconnect in the Code, as we see it, for disclosure of information as provided to persons who buy property that's in a home association that's a historic district. People who are not covered by a home association who might buy a property in a historic district is not given.
 - In Portsmouth, we have six historic districts. There are a few signs to indicate the strategic locations of these districts. There are quite often very few visual clues that clearly indicate the boundaries. Oftentimes, people are unaware that the specific property is in a historic district.
 - We have also sent out to you, if you had a chance to look at it, a PowerPoint specifically talking about historic district homes roof analysis. If you have a chance to look at page 19, you'll see there's a glaring difference between how

much it costs to replace a roof, a natural slate roof, compared to an architectural-grade asphalt roof. I'm not going to go into a lot of it right now. I may come back at the end of the presentation from our citizens.

- I have Ms. Terry Danaher from the City of Portsmouth with me, and Ms. Dawn Richardson. If it's okay with the Commission, I'd like to let them speak, and then I'll come back at the end. Ms. Danaher.
- **Terry Danaher, Portsmouth citizen:** Thank you, Sherri. Good morning, Senator Locke, it's good to see you again, and hello everybody else up there.
- **Danaher:** I'm Terry Danaher. I live in Portsmouth in Olde Towne.
 - I had talked to Sherri about coming up here because this is legislation that I actually had suggested ten years ago. So I've been sort of working on it for ten years. And I'd really like to see something happen with it.
 - I live in a historic house, and I am the current president of the Olde Towne Civic League. So historic preservation is very much on our minds as we are going through periods of flood and need to repair and do those things. It's becoming very obvious. I had a roof leak, so I had to have my roof replaced recently. So I am very, very aware of costs that are here as part of historic district living.
 - What I have found is our city council and the Historic Preservation Commission have had some recent conflicts. And Dawn is going to talk about that a little bit more. But I would like to point out that I've also been vice-chair of the EDA in Portsmouth. And I've been on the Housing Appeals Board where we dealt with things like repairs and renovations. So I am coming at this from knowledge and a base of understanding.
 - Anyway, I would like to introduce Dawn Richardson right now. She is a homeowner in Olde Towne. She runs a bed and breakfast from her home, in fact. She is currently on the Downtown Design Commission, and she is a former member of the Historic Preservation Commission. I'm going to let her speak for a minute, and then I'll come back, and then Sherri will entertain you further.
- **Dawn Richardson, Portsmouth citizen:** Thank you, Terry. Thank you, esteemed colleagues, for allowing me this opportunity to speak.
 - As Terry said, I'm on the Downtown Design Committee. I was previously on the Historic Preservation Commission. And I'm on the Executive Board of the Olde Towne Civic League. I own a bed and breakfast. I chose the house in the historic district in order to do that, and bought that going in.
 - In my experiences on the Historic Preservation Commission, we had several people come to the Commission that when they purchased their homes, they did not understand that they were in a historic district, and they didn't understand the impacts to that. We had a young woman who bought a house, had a large front

yard. She went in and she put up a chain-link fence in the historic district. They came to the Commission, and we said, “You have to take down the chain-link fence. It doesn’t meet our codes.” And she had this dog and she’s like, “Well, what am I going to do with the dog?” And we’re like, “Backyard.” But the backyard was quite small. She said, “I wouldn’t have bought this house if I had known that.”

- We have a young navy couple that bought a house, didn’t understand they were in a historic district. The house needed roof repair. They understood that the roof needed to be replaced when they bought the house. They didn’t understand that it needed to be replaced with slate or with a slate-like material, the difference in cost there. The amount they paid for the house was about the amount the roof was going to cost.
- I’m a retired navy captain. We have a lot of navy and Coast Guard in Portsmouth, a lot of transient community. They move here and they want to buy a house, but they just don’t understand the historic districts. When you drive around Portsmouth, you see these lovely little signs saying “Entering Olde Towne” or “Entering Parkview.” But a lot of places have neighborhoods that are labeled and have names, but they don’t have any requirements that go along with that. And these historic districts have requirements for everything that’s external to the home. So the roofs, the yards, the siding on the houses, the materials that they use, the windows all have to meet the code.
- Are there any questions that I can answer at this time?
- **Locke:** Are individuals not told at the time that they purchased the house that they’re in a historical district and what the requirements are for living in a historic district?
- **Richardson:** The two that I mentioned were not told. It was nowhere in their deed, and the real estate agent did not divulge that.
- **Dicks:** Virginia Association of Realtors. We have an existing statute. Just for the benefit of everybody, we have what’s called a *red flag disclosure*. We’re a buyer beware state where the buyer is responsible to determine what aspects of the property affect the buyer—things like whether there’s a sex offender in the neighborhood, what’s going to go on the adjacent properties, whether it’s a dam inundation zone, whether it’s in a historic district, all of these sorts of things. And the language basically says that the owner, the seller—who may or may not know that they’re in a historic district, because historic boundaries change at the local ordinance level—makes no representations about whether any provisions of a historic district ordinance apply to the property.
- The purchasers are specifically advised to exercise whatever due diligence they feel is necessary to find out about the historic district, what limitations there are, including review specifically of any local ordinance and any official map that the locality may have—some localities have official historic district maps; some localities don’t—and

in accordance with the real estate purchase contract. So one of the things that we train our buyer's agents to do—and I'd like to say to you that they all do this, but I'm sure that some don't. Just to be clear, the Virginia Association of Realtors, who represent 32,000 members—and there's 50,000 real estate licensees. So there is a universe of people that are not realtor members that don't get the training that the Virginia Association of Realtors tries to train our members on.

- What we've tried to do in this disclosure statute is to say these are a laundry list of things that the buyer should look at. We've updated this so that it's on the Real Estate Board website. All anybody has to do when they sign a contract, if they're represented by a buyer agent or if they're not, in the contract, there's a link to this Real Estate Board form. And the form lists all the things that a buyer should look at before they buy a house. We've been a buyer beware state since English common law. We've never been a seller who is a consumer has an obligation to specifically disclose certain kinds of things.
- I was looking back while both of you kind ladies were talking to see when it was we put the historical provision in the laundry list. It predates 2008 as far as I got back in the legislative history search. There are always people that will miss something when they buy a house. We get complaints all the time: "I didn't know I couldn't put a deck in my backyard." Well, we specifically said if you're next to the watershed or a creek, you're in the Chesapeake Bay Preservation Area. You need to go check that out before you buy the house and before you decide that you want to add a deck.
- With that background, my question really is, obviously there are some people who have fallen through the cracks on a buyer beware statute. But how would the mandate work on people that currently live in the City of Portsmouth or anywhere else? How would the mandate work when the sellers don't even know in many cases that they're in a historic district boundary that changes by local ordinance?
- **Richardson:** Let me say one thing and then turn it over to Terry, who's our main speaker.
 - I know when I bought my house there were statements for lead, there were statements for asbestos, there were statements for termites that all had to be signed by the seller saying that these were clear. So buyer beware in most circumstances, but it could be an additional thing on the contract saying that you are or are not in the historic district. All of the sellers that I have been involved with knew that they were in a historic district. It's not something that once you own the property you're unaware of.
- **Dicks:** Madam Chair, could I ask you one question? When you bought your property, how did you find out that you were in a historic district, local historic district?
- **Richardson:** I was looking at the local historic districts in order to buy a house that I could make into a small business, a bed and breakfast. So that was the requirement for me.

- **Dicks:** Okay, thank you.
- **Danaher:** I would like to address your question, too, because it's legit, absolutely. One of the things that came up when I was buying my house—and this was back in 2003—was it's in a historic district. The real estate agent's response to my question about it was, "It just means it has to look the same." And I am a stupid buyer, and I believed her. And I don't think she was being malicious. It's quite possible that that's what she thought.
 - Before I lived in a historic district, I lived in a house that was in a homeowners association in Northern Virginia. And one of the things that had to happen in homeowners associations, as you probably know by previous legislation, is that people who are selling the house have to give the guidelines of the association to the people who looking to buy the house. And the people who are putting a contract on the house have a certain number of days that they have to review those. They can say, "Oh, I can't live here because I have to put my satellite dish in the front yard," or "I want to put a chain-link fence up," or whatever. They have that option. And it just gives them time to see what they're getting into.
 - It seemed to me ten years ago when I was dealing with this on an appeals commission that it would be such a simple thing to do to say okay, you're in a historic district. There are published guidelines. We have guidelines for every—every district has their own. And these are the direct result of citizen input. We worked for two years with consultants in the city to get guidelines. And they are very clear and easy to read. Somebody might be put off by something like this, especially if they do a cost analysis.
 - You want a serious buyer to be prepared to deal with the house because the economic impact of historic districts is well known in places like our city. Our historic districts bring in tourists, and they provide endless employment because we are always repairing our houses. There are economic impacts associated with it. It seems to me that if you have something as cosmetic as where you can put your satellite dish, it has to be revealed to a buyer. It's something that has an economic impact not only on the place that you're buying, but on the person who is trying to purchase the house and is going to take care of it. It ought to be a little bit clearer so that you don't have a misunderstanding, and you have people who buy the house who can take care of it, who can live in the community happily. That's pretty much why we're here is just to make that one thing clearer.
- **Neil:** To Mr. Dicks' point as well, in your packages there's a little statement that came with our legislative program for 2015. And it refers to the Code section that you're speaking to for the homeowners association, which is § 55-509.5, which provides potential sellers of property within their association with certain information relating to the property to include permitted information regarding improvements or alterations made to the property that cannot be in violation of the, quote, "declaration, bylaws, rules and regulations, and architectural guidelines." That's in there for people who are buying in historic districts or property that's in a homeowners association. If you don't

have that, you're not going to get any of that information. So we see that as a bit of a disconnect in the Code, which is why we asked Senator Locke to bring this forward on behalf of the city to hopefully get it into the Virginia Housing Commission and maybe get a work group together to discuss it and try to come up with some kind of way to address that.

- My Planning Director could not be here this morning due to other commitments, but he did give me some other notes if I may share them with you.
- He says that, furthermore, historic district requirements can be quite extensive and expensive. We recently had a study, which I shared with you about the repairing of a roof, which Ms. Danaher just referred to and I spoke to briefly. In that, it goes from showing you where your material for natural slate removal starts from 60 to 85 dollars. Material and installation is 1,500 to 2,000 for a total average of 1,830, compared to architectural-grade asphalt, which is 25 to 35 dollars. Total average cost was 30 dollars.
- He further says that historic districts can be quite large, and without clear visual indicators to the untrained eyes regarding boundaries, without required disclosure, we should not be surprised that homebuyers are unaware of the extensive rules and regulations covering the exterior of their properties. Lack of awareness can lead to the unintended damage to historic elements when homebuyers perform repairs without proper approvals, unaware that what they are using, or doing, rather, may require special permits. And many of the structural elements cannot be replaced once damaged or destroyed.
- Historic home repairs and upkeep can be quite expensive and time-consuming. For the sake of both the buyer and the structure, there needs to be an awareness of the rules and the requirements that apply to a historic structure. There are homebuyers that cannot afford to make compliant repairs. And as consumers, they need help in being aware of what they are getting themselves into.
- And finally he says information regarding historic districts readily available, boundary maps and design guidelines, etcetera. Disclosure information greatly informs and helps homebuyers in historic structures, etcetera, but without adding much additional effort to the real estate agents and brokers. We should not hide these facts from buyers because real estate sellers are afraid they'll lose a sale. We see this as being consumer protection, and public disclosure should be first and foremost in the process.
- So that's why we're here this morning. We just ask that you consider.
- **Locke:** Senator Barker.
- **Senator George Barker:** This is a question for whoever wants to tackle it here. I think you're seeing, Mr. Dicks, some reticence about requiring the real estate [agent] and making them liable for that type of information provided at the settlement time. It

seems to me that a way around that might be if the city were in some way able or willing to assume that responsibility since it's the city that's created these districts.

- When we've been down in Portsmouth for various meetings, I frequently in the morning have gone running through some of your historic districts, and they do look very nice. I haven't tripped and fallen just gawking at the houses, but maybe next time. I think they are certainly very attractive.
- Has there been any thought given to how the city might be involved, directly or indirectly, in the process as an entity that would provide this information to a potential buyer rather than just tying it directly into the real estate contract and the realtor and the seller?
- **Richardson:** I'll take a stab at it. We didn't talk about it citywide because we realized that we're not the only historic district in the world, although we are the most important historic district in the world, obviously.
 - I would like for the record to say my father was a real estate agent, so I do not think all real estate agents are terrible people or anything. It's not about that. It really is about a contractual obligation, just saying, okay, you don't have the termites, you have to have flood insurance, you have to do this, and you have to do that. And, by the way, you're in a historic district, and this is what it's going to cost you to be here and to maintain your home.
 - It is in the interest of the other people who live in the district that people who come in and buy are able to take care of their houses. It has a huge impact on the entire community and on the city, ultimately. But it's not just our city; it's all across the state.
- **Locke:** Yes, Kelly.
- **Kelly Harris-Braxton, *Virginia First Cities*:** Kelly Harris-Braxton with Virginia First Cities. This is an important issue that you raised. I'm glad that you did raise it.
 - Homeownership in historic districts can be quite burdensome for anyone who decides to locate there. Also, there are lots of houses in those districts or properties in those districts that are not that expensive because they may need a lot of work for lots of different reasons because they're old. Certainly it can be attractive to someone who's looking for an inexpensive place to settle, and then they find out the roof costs as much as the whole house and they can't afford it.
 - To me, it seems like it's an important enough item to consider. I'd be happy to work on a work group for this because I think this is a very important issue that needs to be more noticed. The question of how the cities could be involved is something that we can look at. I don't know how they could at this point because they would have to be involved in every sale, and I don't know how that happens unless there is some requirement for clear designation of these properties.

- And then it's not just the designation, but it's also people understanding what does it really mean. Okay, I'm in a historic district. Well what does that mean? I know there's this buyer beware piece, but we want to make sure that people aren't putting asphalt roofs on a house that needs to have slate, and then have to come back and be overly burdened with having to replace it. Like the fence. Fences are expensive, chain-link or otherwise. So I think it is an important issue that we need to discuss, and I'm very interested in it.
- **Dicks:** Madam Chair, I understand we're talking about your bill.
- **Locke:** Yes, you are.
- **Dicks:** I'll start with that comment, Madam Chair. The one observation I'd make is you analogized to homeowner associations and condo associations. What happens in that practice is if I'm the owner of the dwelling unit, I request the association to prepare the packet in a disclosure format or a resale certificate in a condominium. And the association sends the package. So an analogous situation would be, to Senator Barker's point, that the seller request the locality, because you've got the boundaries, you've got the map, you've got all the requirements and everything else, and those requirements get updated on a regular basis. Ask the locality to send the packet of the historic information to the potential buyer. I don't know that you want to go down that road, but that's the analogous process.
 - On behalf of the realtors, we very much believe that buyers should be aware of what they buy when they move into a historic district, because it is expensive, it is burdensome, it's restrictive.
 - You might remember a few years ago we had legislation to define historic districts because some localities had said we're just going to declare this whole area a historic district without any rationale of the boundaries. So Delegate Marshall had a bill that better defined historic districts so it would at least be fair for the homeowners in that area, that they would be restricted by certain things in the Historic District Ordinance and go to the ARB or the Historic Commission or whatever is the appropriate governing body in that locality to get approval to do certain things.
 - At the same time, I guess obviously I'm willing to certainly engage in the discussion, but it's not an analogous situation where in a homeowners association the seller is putting together all of this information and giving it to the buyer. The homeowners association or the condo association does all that. And again, the analogous situation here would be the city has all the information. Whether this would be something that localities would want to undertake, I don't know. But I think we're probably fixing to hear that.
- **Richardson:** I would like to say that all our guidelines are online, so it really is quite a simple matter just to identify where, for someone in Planning, for instance, to say, yes, it's in a historic district. Boom, there's the information. Or tell the person where they

can find it. It's just a question of getting the information into the hands of the people who need it and who don't even know they need it—maybe. And that's the problem.

- **Locke:** Let's hear from VML.
- **Gowdy:** Madam Chair, Michelle Gowdy, Virginia Municipal League. I am certainly happy to participate in a work group and look into the matter. I can tell you it sounds like an unfunded mandate, which local government really doesn't like. And I have some other concerns about it, but I think probably working together might be the best option to look into it.
- **Locke:** I think you just volunteered for the smaller work group.
- **Dicks:** Madam Chair, if I could just make that one observation. That's exactly the way the real estate disclosure packet works now. It's referenced in the contract to a website at the Real Estate Board. So I guess an analogous situation would be here, you put that provision in the disclosure statute, and then in the contract there would be a reference. And you'd go to the city's website, and anybody that had any questions would contact the city and ask. They would end up doing that anyway. You contact the city to ask what limitations and what I can do with my property based upon—
- **Richardson:** I think you just did it. I think you just solved the whole problem.
- **Locke:** You're on it, too.
- **Flynn:** Mark Flynn. To follow up on it, with the HOA disclosure, the seller's real estate agent ends up having a role in that, right, because the seller's agent is the one who takes the first step to get that action going. Isn't that the way it works?
- **Dicks:** Madam Chair, what happens is the seller's agent makes the request. It can either be the seller or the seller's agent that makes the request. And then that's the way that disclosure packet works.
- **Locke:** Okay, I think we're going to have a smaller group to work on this and see what we can come up with to deal with this issue. And anybody who talked is on the group. So that means Chip, Kelly, Mark, George. You're on the group.
- **Neil:** Thank you. We look forward to working with you.
- **Richardson:** Thank you all very much. Thank you.

V. Ground Cover and Proximity to Buildings

- **Locke:** We're now down to agenda item number five, ground cover and proximity to buildings. This is Cindy Davis, Director of State Building Codes Office.

- **Cindy Davis**, *Director, State Building Codes Office*: Thank you, Madam Chair. I am here this morning to give you some information related to the current update process that's underway in Virginia as it may relate to the issue before this Commission related to ground cover.
 - Historically, if there's an issue that may be related to how a building is constructed, typically those things have historically gone through the stakeholder process during the code development update process. As I mentioned, it is currently underway. We have not yet published the proposed regulations. There are stakeholder meetings underway and have been underway for several months. We have another one coming up later this month for proposed changes. And we have the second half of the cycle, which if a proposed change is not vetted or a decision made prior, it can certainly be done so during the second half of the process. So I wanted to make sure that you were all aware of that, that we are in the midst of updating the building and fire code regulations from the 2012 to the 2015 Virginia Codes currently.
- **Locke**: Any questions? That was a big discussion during session.
- **Male**: I assume this is following up on Harrisonburg.
- **Davis**: Yes, yes. That particular issue was the item before you.
- **Locke**: Any questions?
- **Dicks**: Madam Chair, I don't have a question, but are we clear that this is being looked at in the building code work group? These issues traditionally have been looked at in the building code work group. I don't know that we need to address the issue in the Housing Commission except to receive whatever report the building code work group comes back with.
- **Locke**: All right.
- **Dicks**: Thank you.

VI. Public Comment

- **Locke**: We're now down to public comment. Is there anybody out there with some burning issue that they want to bring before the work group? If not, we are adjourned. Elizabeth, will you will come up with a date for the smaller group to discuss the issues?

VII. Adjournment

- Upon hearing no further requests for comment, Senator Locke adjourned the meeting at 12: 15 P. M.